

**ENVIRONMENTAL ADVOCATES**

ATTORNEYS AT LAW

5135 ANZA STREET

SAN FRANCISCO, CA 94121

(415) 533-3376

Fax: (415) 358-5695

E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com), [mcoyne@enviroadvocates.com](mailto:mcoyne@enviroadvocates.com)

February 15, 2019

*Submitted via email to [usaf.pentagon.saf-aa.mbx.haf-foia-workflow@mail.mil](mailto:usaf.pentagon.saf-aa.mbx.haf-foia-workflow@mail.mil)*

**Headquarters Air Force/AII (FOIA)**

1000 Air Force Pentagon

Washington, DC 20330-1000

Phone: (703) 693-2735/692-9981

**Re: Request Under Freedom of Information Act (Fee Waiver/Limitation Requested)**

Dear Freedom of Information Officer:

Ecological Rights Foundation (“EcoRights”), via their public interest counsel at Environmental Advocates, requests the following documents:

- (1) All documents that provide the following information for any flights provided by the U.S. Air Force to former U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt during the month of June 2017: all the passengers on the flight(s), the itinerary(ies) (i.e., from where the plane(s) used to transport Mr. Pruitt originally departed, where it picked up Mr. Pruitt and where it left him off), the cost of all the flights involved in transporting Mr. Pruitt, any payments made by EPA for the flights, the type of aircraft used, the home base of the aircraft used, and the duration of all flights.
- (2) All documents constituting any governmental approvals for the flights referred to in paragraph 1, including any interagency agreements between EPA and the Department of the Air Force and/or the White House Military Office.
- (3) All documents explaining the rationale and/or recommending approval for the flights referred to in paragraph 1.

We trust that the government will reach a determination on this request within FOIA's 20 working day deadline and will limit any possible withholding to those documents that the government can meet its burden to show are truly exempt from disclosure and the release of which would cause foreseeable harm.

For purposes of this request "documents" means "all written, typewritten, drawn or printed material or record of any type or description and all information kept or recorded on magnetic or electronic media, including, without limitation, correspondence, letters, agreements, contracts, memoranda of agreement or understanding, electronic mail (including both messages sent and received from government personnel), telegrams, inter- and intra-office communications, forms, reports, studies, working papers, handwritten or other notes, phone records, logs, diaries, minutes, spreadsheets, computation sheets, data sheets, transcripts, drawings, sketches, plans, leases, invoices, index cards, checks, check registers, maps, charts, graphs, bulletins, circulars, pamphlets, notices, summaries, books, photographs, sound recordings, videotapes, rules, photocopied or computer-related materials, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them, and all forms of written or recorded matter to which [the government has] access or of which [the government has] any knowledge"). "Related to" means "comprising, constituting, containing, evidencing, setting forth, summarizing, alluding to, responding to, commenting upon, discussing, supporting, refuting, showing, disclosing, explaining, mentioning, analyzing, recording, reflecting upon, or characterizing, either directly or indirectly, in whole or in part.

FOIA requires that an agency disclose documents to any person except where the document falls under a specifically enumerated exemption. 5 U.S.C. § 552 (2002). "[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act"; "[c]onsistent with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 7-8 (U.S. 2001) (internal citations omitted). The courts have emphasized the narrow scope of these exemptions and "the strong policy of the FOIA that the public is entitled to know what its government is doing and why." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). Further, under the recent amendments, 5 U.S.C § 552(a)(8)(A) now provides that (1) an agency shall withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) or disclosure is prohibited by law; (2) the agency shall consider

whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (3) the agency shall take reasonable steps necessary to segregate and release nonexempt information.

Thus, the government has a duty in preparing responses to EcoRights' FOIA request not to withhold documents unless foreseeable harm exists, to consider partial disclosure, and to take reasonable steps to segregate nonexempt information. Exemptions are read narrowly and the government bears the burden of proving exemptions apply. 5 U.S.C. § 552(a)(4)(b); *see Milner v. Dep't of the Navy*, 562 U.S. 562, 563 (U.S. 2011). Agencies "should not withhold information simply because [they] may do so legally. . . For every request, for every record reviewed, agencies should be asking 'Can this be released?' rather than asking 'How can this be withheld?'"<sup>1</sup> *See also Mobil Oil Corp. v. U.S. E.P.A.*, 879 F.2d 698, 700 (9<sup>th</sup> Cir. 1989) ("The exemptions are permissive, and an agency may voluntarily release information that it would be permitted to withhold under the FOIA exemptions.")

We request that the government provide electronic copies of its response to this request – as well as any responsive documents that may be transmitted via e-mail – to Christopher Sproul and me at the following e-mail addresses:

Molly Coyne: [mcoyne@enviroadvocates.com](mailto:mcoyne@enviroadvocates.com)

Christopher Sproul: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

Please send any documents that must be sent via regular mail to the following address:

Christopher Sproul  
Environmental Advocates  
5135 Anza St.  
San Francisco, California, 94121

As indicated in the attached fee waiver, EcoRights requests that the Air Force waive any fees associated with responding to this request. If the Air Force declines this request, EcoRights further requests an estimate of the charges to respond to this request in full. In the event the Air Force denies our fee waiver request, EcoRights will provide the Air Force with further instructions concerning how much it would then be willing to pay for a response to this request pending what would then be a likely appeal of the Air Force denial of our fee waiver. To the extent this is required for the Air Force to presently process our request, EcoRights indicates it would be willing to pay \$500 for the Air Force's response in the event the Air Force denies our fee waiver request.

Your staff may contact me at [mcoyne@enviroadvocates.com](mailto:mcoyne@enviroadvocates.com) or (401) 345-2705 to further discuss your response to this request. Thank you for your prompt attention to this matter.

Sincerely,

*s/ Molly Coyne*

Molly Coyne

Environmental Advocates

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<sup>1</sup> U.S. Department of Justice – Office of Information Policy, *Creating a New Era of Open Government*; see also *Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act* (74 Fed. Reg. 4683); Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act [74 Fed. Reg. 51879 (Oct. 8, 2009)]